

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

THE TOPLINE CORPORATION, a  
Washington Corporation, and REPORT  
FOOTWEAR, INC., a Washington  
Corporation,

Plaintiffs,

v.

4273371 CANADA, INC., a Canadian  
Corporation, and MODEXTIL, INC., a  
Canadian Corporation, jointly d/b/a REPORT  
COLLECTION,

Defendants.

C07-938Z

PRELIMINARY INJUNCTION

The Court, having considered the Motion for Preliminary Injunction, docket no. 3, filed by Plaintiffs The Topline Corporation and Report Footwear, Inc. (collectively 'Topline') on June 21, 2007, the submissions of the parties, the record herein, and the law, and having had oral argument on Plaintiffs' Motion, docket no. 3, on August 3, 2007, and having taken the matter under advisement, now enters this preliminary injunction:

- a. The Court has jurisdiction over the parties and the subject matter.
- b. Topline is the owner of U.S. Registration No. 2,169,637 for REPORT: for women's shoes, and Topline is also the owner of U.S. Registration No. 3,246,085 for REPORT for women's footwear and girls' footwear (collectively Topline's "REPORT Marks.").
- c. Topline's federal trademark registrations create a presumption of ownership and validity of its REPORT Marks, a presumption that is un rebutted by Defendants.

1 d. The REPORT Marks are arbitrary or fanciful as applied to women's shoes,  
2 accessories, and apparel.

3 e. Topline has conducted substantial business under and engaged in substantial  
4 promotion of its REPORT Marks through the sale of REPORT shoes. Topline's wholesale  
5 sales of REPORT brand footwear grew from approximately \$7 million in 2002 to  
6 approximately \$26 million in 2006.

7 f. Topline's REPORT shoes have been sold in major department stores, including  
8 Nordstrom and Macy's, since 1994.

9 g. Topline's REPORT Marks and the goodwill associated therewith are valuable  
10 assets of Topline.

11 h. Women's shoes and apparel are complimentary goods that are marketed to the  
12 same customers and sold through the same retail outlets and channels of trade.

13 i. Topline's REPORT Marks and Defendants' REPORT COLLECTION mark  
14 are similar marks as they are encountered in the marketplace. Topline and Defendants both  
15 display "REPORT" in all capital letters, and "REPORT" is the dominant portion of  
16 Defendants' REPORT COLLECTION mark.

17 j. There is no evidence of actual consumer confusion between Topline's  
18 REPORT Marks and Defendants' REPORT COLLECTION mark.

19 k. Defendants were aware of Topline's REPORT brand footwear as early as 1998  
20 or 1999, and certainly in 2005 when they decided to expand into REPORT COLLECTION  
21 women's apparel. However, there is no evidence of Defendants' intent to adopt a REPORT  
22 COLLECTION mark similar to Topline's REPORT Marks in an effort to deceive the public.

23 l. Although Topline expanded its use of its REPORT Marks to women's  
24 handbags in 2004, the record fails to demonstrate a strong possibility of Topline's likelihood  
25 of expansion into women's apparel.

26 m. Defendants first used REPORT COLLECTION for men's clothing in the U.S.  
in 1996, after Topline's first use of its REPORT Marks for women's shoes.

n. Defendants first offered for sale REPORT COLLECTION women's apparel in  
February 2006. Since then, Defendants have conducted only limited marketing and sales of  
women's apparel. However, Defendants have booked significant sales for their Fall 2007  
line of women's apparel.

o. Defendants' use of REPORT COLLECTION for women's apparel is likely to  
cause confusion in the marketplace.

p. Topline would suffer irreparable harm in the absence of preliminary injunctive  
relief.

1 q. Defendants will suffer monetary damages and damage to their reputation if  
2 preliminary injunctive relief is granted.

3 r. Defendants continued their expansion into REPORT COLLECTION women's  
4 apparel despite having heard objections from Topline as early as August 2006.

5 s. The balance of hardships tips in Topline's favor.

6 Accordingly, Plaintiffs' Motion for a Preliminary Injunction, docket no. 3, is  
7 GRANTED, and IT IS HEREBY ORDERED that:

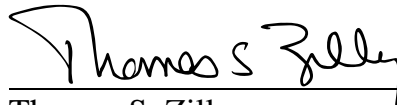
8 1. Defendants, and their affiliates, officers, agents, servants, employees, attorneys  
9 and all other persons in active concert or participation with any of them, are hereby  
10 preliminarily enjoined and restrained while this action is pending from using the REPORT  
11 COLLECTION mark in connection with the advertising and sale of women's clothing, and  
12 the use on products, packaging, advertising, labels, or other sales or shipping material for  
13 women's clothing. Defendants shall take reasonable steps to cease using the REPORT  
14 COLLECTION mark in connection with advertising the sale of women's clothing on retail  
15 websites such as [www.shop.reportcollection.com](http://www.shop.reportcollection.com).

16 2. Defendants are directed to file with this Court and serve on Topline within  
17 thirty (30) days after the service of this preliminary injunction a report in writing, under oath,  
18 setting forth in detail the manner and form in which Defendants and their affiliates, officers,  
19 agents, servants, employees, attorneys and all other persons in active concert or participation  
20 with any of them have complied with the injunction.

21 3. Plaintiffs are required to post a bond in the amount of one million dollars  
22 (\$1,000,000). This preliminary injunction will become effective upon the filing of the  
23 necessary bond.

24 4. The Court will issue a written opinion explaining the basis for this preliminary  
25 injunction.

26 DATED this 3rd day of August, 2007.

  
Thomas S. Zilly  
United States District Judge